

# Senate Study Bill 1251

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CO=CHAIRPERSONS KREIMAN  
AND MILLER)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the Iowa probate code, the Iowa trust code,  
2 and certain other trusts.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 1076SC 81  
5 rh/sh/8

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1 1 Section 1. Section 249A.3, subsection 11, paragraph d,  
1 2 Code 2005, is amended to read as follows:  
1 3 d. Failure of a surviving spouse to take ~~against a will~~ an  
1 4 elective share pursuant to chapter 633, division V,  
1 5 constitutes a transfer of assets for the purpose of  
1 6 determining eligibility for medical assistance to the extent  
1 7 that the value received by taking ~~against the will~~ an elective  
1 8 share would have exceeded the value of the inheritance  
1 9 received under the will.  
1 10 Sec. 2. Section 633.3, subsection 15, Code 2005, is  
1 11 amended by striking the subsection and inserting in lieu  
1 12 thereof the following:  
1 13 15. ESTATE == the real and personal property of either a  
1 14 decedent or a ward, and may also refer to the real and  
1 15 personal property of a trust as defined in section 633.10.  
1 16 Sec. 3. Section 633.3, subsection 17, Code 2005, is  
1 17 amended to read as follows:  
1 18 17. FIDUCIARY == includes personal representative,  
1 19 executor, administrator, guardian, conservator, and the  
1 20 trustee of any trust as defined in section 633.10.  
1 21 Sec. 4. Section 633.3, subsection 34, Code 2005, is  
1 22 amended to read as follows:  
1 23 34. TRUSTEE == the person or persons ~~appointed as trustee~~  
1 24 ~~by the instrument creating the trust, or the person or persons~~  
1 25 ~~appointed by the court to administer the trust serving as~~  
1 26 trustee of a trust as defined in section 633.10.  
1 27 Sec. 5. Section 633.3, subsection 35, Code 2005, is  
1 28 amended by striking the subsection and inserting in lieu  
1 29 thereof the following:  
1 30 35. TRUSTS == includes only those trusts defined in  
1 31 section 633.10.  
1 32 Sec. 6. Section 633.10, unnumbered paragraph 1, Code 2005,  
1 33 is amended to read as follows:  
1 34 The In addition to the jurisdiction granted the district  
1 35 court under the trust code or elsewhere, the district court  
2 1 sitting in probate shall have jurisdiction of:  
2 2 Sec. 7. Section 633.10, subsection 2, Code 2005, is  
2 3 amended to read as follows:  
2 4 2. CONSTRUCTION OF WILLS ~~AND TRUST INSTRUMENTS.~~  
2 5 The construction of wills ~~and trust instruments~~ during the  
2 6 administration of the estate ~~or trust~~, whether said  
2 7 construction be incident to such administration, or as a  
2 8 separate proceeding.  
2 9 Sec. 8. Section 633.10, subsection 4, Code 2005, is  
2 10 amended by striking the subsection and inserting in lieu  
2 11 thereof the following:  
2 12 4. TRUSTS AND TRUSTEES.  
2 13 a. The ongoing administration and supervision, including  
2 14 but not limited to the appointment of trustees, the granting  
2 15 of letters of trusteeship, trust administration, and trust

2 16 settlement and closing, of the following trusts:

2 17 (1) A trust that was in existence on July 1, 2005, and  
2 18 that is subject to continuous court supervision.

2 19 (2) A trust established by court decree that is subject to  
2 20 continuous court supervision.

2 21 b. A trust described in paragraph "a" shall be governed by  
2 22 this chapter and the provisions of chapter 633A which are not  
2 23 inconsistent with the provisions of this chapter.

2 24 c. A trust not described in paragraph "a" shall be  
2 25 governed exclusively by chapter 633A and shall be subject to  
2 26 the jurisdiction of the district court sitting in probate as  
2 27 provided in section 633.6101.

2 28 d. Upon joint application by the trustee administering a  
2 29 trust described in paragraph "a" and following notice to the  
2 30 beneficiaries pursuant to section 633.40, the court shall  
2 31 release the trust from further jurisdiction unless a  
2 32 beneficiary objects. The court whose decree created the trust  
2 33 may release the trust from continuous court supervision  
2 34 following notice to the beneficiary pursuant to section  
2 35 633.40. If such judicial release occurs for a trust  
3 1 previously governed by this chapter, such trust shall be  
3 2 governed by chapter 633A and the district court sitting in  
3 3 probate as provided in section 633.6101.

3 4 Sec. 9. Section 633.27, subsection 4, Code 2005, is  
3 5 amended to read as follows:

3 6 4. The title of each trust ~~where letters of trusteeship~~  
3 7 ~~are issued described in section 633.10 that has not been~~  
3 8 ~~released by the court from continuous court supervision.~~

3 9 Sec. 10. Section 633.108, Code 2005, is amended to read as  
3 10 follows:

3 11 633.108 SMALL DISTRIBUTIONS TO MINORS == PAYMENT.

3 12 Whenever a minor becomes entitled under the terms of a will  
3 13 to a bequest or legacy, ~~or to a share of the estate of an~~  
3 14 ~~intestate, or to a beneficial interest in a trust fund upon~~  
3 15 ~~the distribution of the trust fund,~~ and the value of the  
3 16 bequest, legacy, ~~or share, or interest~~ does not exceed the sum  
3 17 of ~~ten twenty-five~~ thousand dollars, the personal  
3 18 representative ~~or trustee~~ may pay the bequest, legacy, ~~or~~  
3 19 ~~share, or interest~~ to a custodian under any uniform transfers  
3 20 to minors Act. Receipt by the custodian, when presented to  
3 21 the court or filed with the report of distribution of the  
3 22 fiduciary, shall have the same force and effect as though the  
3 23 payment had been made to a duly appointed and qualified  
3 24 conservator for the minor.

3 25 Sec. 11. Section 633.236, Code 2005, is amended by  
3 26 striking the section and inserting in lieu thereof the  
3 27 following:

3 28 633.236 RIGHT OF ELECTIVE SHARE OF SURVIVING SPOUSE.

3 29 When a married person domiciled in Iowa at the time of  
3 30 death dies, the surviving spouse shall have the right to take  
3 31 an elective share under the provisions of sections 633.237  
3 32 through 633.246. If the surviving spouse has a conservator,  
3 33 the court may authorize or direct the conservator to elect the  
3 34 share as the court deems appropriate under the circumstances.

3 35 Sec. 12. Section 633.237, Code 2005, is amended by  
4 1 striking the section and inserting in lieu thereof the  
4 2 following:

4 3 633.237 PRESUMPTION AGAINST FILING ELECTIVE SHARE.

4 4 1. Following the appointment of a personal representative  
4 5 of the estate of the decedent, who is not the spouse, the  
4 6 personal representative shall cause to be served a written  
4 7 notice upon the surviving spouse pursuant to section 633.40,  
4 8 subsection 5, notifying the surviving spouse that unless,  
4 9 within four months after service of the notice, the spouse  
4 10 files an election in writing with the clerk of court electing  
4 11 the share as set forth in section 633.236, and sections  
4 12 633.238 through 633.246, the spouse shall be deemed to take  
4 13 under the will or to receive the intestate share. If, within  
4 14 the four-month period following service of the notice, an  
4 15 affidavit is filed setting forth that the surviving spouse is  
4 16 incapable of making the election and does not have a  
4 17 conservator, the personal representative shall make  
4 18 application to the court for an order pursuant to section  
4 19 633.244.

4 20 2. Following the death of a settlor of a revocable trust,  
4 21 the trustee of such revocable trust who is not the spouse  
4 22 shall cause to be served a written notice upon the surviving  
4 23 spouse pursuant to section 633.40, subsection 5, notifying the  
4 24 surviving spouse that unless, within four months after service  
4 25 of the notice, the spouse files an election with the trustee  
4 26 electing the share as set forth in section 633.236, and

4 27 sections 633.238 through 633.246, the spouse shall be deemed  
4 28 to take under the terms of the revocable trust. If, within  
4 29 the four-month period following service of the notice, an  
4 30 affidavit is filed setting forth that the surviving spouse is  
4 31 incapable of making the election and does not have a  
4 32 conservator, the trustee shall make application to the court  
4 33 for an order pursuant to section 633.244.

4 34 3. If the surviving spouse has a conservator, notice shall  
4 35 be given to the conservator and the spouse pursuant to  
5 1 subsections 1 and 2.

5 2 4. The notice provisions under subsections 1 and 2 are not  
5 3 applicable if the surviving spouse is a personal  
5 4 representative of the estate or a trustee of a revocable  
5 5 trust. If the surviving spouse fails to file an election  
5 6 under this section within four months of the decedent's death,  
5 7 it shall be conclusively presumed that the surviving spouse  
5 8 elects to take under the will, receive the intestate share, or  
5 9 take under the revocable trust.

5 10 5. Upon application of the surviving spouse or conservator  
5 11 filed before the time for making the election expires, the  
5 12 court may extend the period in which the surviving spouse may  
5 13 make the election.

5 14 Sec. 13. Section 633.238, Code 2005, is amended by  
5 15 striking the section and inserting in lieu thereof the  
5 16 following:

5 17 633.238 ELECTIVE SHARE OF SURVIVING SPOUSE.

5 18 1. The elective share of the surviving spouse shall be all  
5 19 of the following:

5 20 a. One-third in value of all the legal or equitable  
5 21 estates in real property possessed by the decedent at any time  
5 22 during the marriage which have not been sold on execution or  
5 23 other judicial sale, and to which the surviving spouse has  
5 24 made no expressed written relinquishment of right.

5 25 b. All personal property that, at the time of death, was  
5 26 in the hands of the decedent as the head of a family, exempt  
5 27 from execution.

5 28 c. One-third of all personal property of the decedent that  
5 29 is not necessary for the payment of debts and charges.

5 30 d. One-third in value of the property held in trust not  
5 31 necessary for the payment of debts and charges over which the  
5 32 decedent was a grantor and retained at the time of death the  
5 33 power to alter, amend, or revoke the trust, or over which the  
5 34 decedent waived or rescinded any such power within one year of  
5 35 the date of death, and to which the surviving spouse has not  
6 1 made any express written relinquishment.

6 2 2. The elective share described in this section shall be  
6 3 in lieu of any property the spouse would otherwise receive  
6 4 under the last will and testament of the decedent in testacy  
6 5 or under the terms of a revocable trust.

6 6 Sec. 14. Section 633.239, Code 2005, is amended by  
6 7 striking the section and inserting in lieu thereof the  
6 8 following:

6 9 633.239 SHARE TO EMBRACE HOMESTEAD.

6 10 The share of the surviving spouse in such real estate shall  
6 11 be set off in such manner as to include the homestead, or so  
6 12 much thereof as will be equal to the share allotted to the  
6 13 spouse pursuant to section 633.238 unless the spouse prefers a  
6 14 different arrangement, but no such different arrangement shall  
6 15 be allowed unless there is sufficient property remaining to  
6 16 pay the claims and charges against the decedent's estate.

6 17 Sec. 15. Section 633.240, Code 2005, is amended by  
6 18 striking the section and inserting in lieu thereof the  
6 19 following:

6 20 633.240 ELECTION TO RECEIVE HOMESTEAD.

6 21 In estates in which the surviving spouse has filed an  
6 22 elective share and in all intestate estates, whether an  
6 23 election is filed or not, the surviving spouse or the spouse's  
6 24 conservator, if applicable, may, in lieu of the spouse's share  
6 25 in the real property possessed by the decedent at any time  
6 26 during the marriage, which has not been sold on execution or  
6 27 other judicial sale, and to which the surviving spouse has  
6 28 made no express written relinquishment of right, elect to  
6 29 receive a life estate in the homestead. Such election shall  
6 30 be made and entered of record as provided in section 633.245.  
6 31 In making such election, the surviving spouse shall have all  
6 32 the rights as to the personal property provided in section  
6 33 633.238, subsection 1, paragraphs "b", "c", and "d". In case  
6 34 of failure to make such election, the right to receive the  
6 35 life estate in the homestead shall be waived.

7 1 Sec. 16. Section 633.241, Code 2005, is amended by  
7 2 striking the section and inserting in lieu thereof the

7 3 following:  
7 4 633.241 TIME FOR ELECTION TO RECEIVE LIFE ESTATE IN  
7 5 HOMESTEAD.  
7 6 If the surviving spouse does not make an election to  
7 7 receive the life estate in the homestead and file it with the  
7 8 clerk within four months from the date of second publication  
7 9 of notice to creditors, it shall be conclusively presumed that  
7 10 the surviving spouse waives the right to make the election.  
7 11 The court on application may, prior to the expiration of the  
7 12 period of four months, for cause shown, enter an order  
7 13 extending the time for making the election.  
7 14 Sec. 17. Section 633.242, Code 2005, is amended by  
7 15 striking the section and inserting in lieu thereof the  
7 16 following:  
7 17 633.242 RIGHTS OF ELECTION PERSONAL TO SURVIVING SPOUSE.  
7 18 The right of the surviving spouse to take an elective  
7 19 share, and the right of the surviving spouse to receive a life  
7 20 estate in the homestead, are personal. They are not  
7 21 transferable and cannot be exercised for the spouse subsequent  
7 22 to the spouse's death. If the surviving spouse dies prior to  
7 23 filing an elective share, it shall be conclusively presumed  
7 24 that the surviving spouse does not take such elective share.  
7 25 Sec. 18. Section 633.243, Code 2005, is amended by  
7 26 striking the section and inserting in lieu thereof the  
7 27 following:  
7 28 633.243 FILING ELECTIONS.  
7 29 The filing of the elective share and the election to  
7 30 receive a life estate in the homestead shall be filed in the  
7 31 office of the clerk in which the decedent's estate is being  
7 32 administered and served on the trustee of the revocable trust.  
7 33 The court where the election is filed shall have exclusive  
7 34 jurisdiction over all matters regarding elections under this  
7 35 chapter.  
8 1 Sec. 19. Section 633.244, Code 2005, is amended by  
8 2 striking the section and inserting in lieu thereof the  
8 3 following:  
8 4 633.244 INCOMPETENT SPOUSE == ELECTION BY COURT.  
8 5 In case an affidavit is filed that the surviving spouse is  
8 6 incapable of determining whether to take the elective share,  
8 7 or to elect to receive a life estate in the homestead, and  
8 8 does not have a conservator, the court shall fix a time and  
8 9 place of hearing on the matter and cause a notice thereof to  
8 10 be served upon the surviving spouse in such manner and for  
8 11 such time as the court may direct. At the hearing, a guardian  
8 12 ad litem shall be appointed to represent the spouse and the  
8 13 court shall enter such orders as it deems appropriate under  
8 14 the circumstances. The guardian ad litem shall be a  
8 15 practicing attorney.  
8 16 Sec. 20. Section 633.246A, Code 2005, is amended by  
8 17 striking the section and inserting in lieu thereof the  
8 18 following:  
8 19 633.246A MEDICAL ASSISTANCE ELIGIBILITY.  
8 20 Failure of a surviving spouse to make an election under  
8 21 this division constitutes a transfer of assets for the purpose  
8 22 of determining eligibility for medical assistance pursuant to  
8 23 chapter 249A to the extent that the value received by making  
8 24 the election would have exceeded the value of property  
8 25 received absent the election.  
8 26 Sec. 21. Section 633.247, Code 2005, is amended by  
8 27 striking the section and inserting in lieu thereof the  
8 28 following:  
8 29 633.247 SETTING OFF ELECTIVE SHARE OF SURVIVING SPOUSE.  
8 30 The share of the surviving spouse under section 633.236 may  
8 31 be set off by the mutual consent of all parties in interest,  
8 32 or by referees appointed by the court. An application to have  
8 33 the share set off by referees shall be made by an interested  
8 34 party in writing by filing with the clerk of court. A copy of  
8 35 such application shall be sent to all interested parties.  
9 1 Sec. 22. Section 633.252, Code 2005, is amended by  
9 2 striking the section and inserting in lieu thereof the  
9 3 following:  
9 4 633.252 CONFIRMATION CONCLUSIVE == POSSESSION.  
9 5 An order confirming a report of the referee shall be  
9 6 binding and conclusive unless appealed within thirty days and  
9 7 the surviving spouse may bring an action to obtain possession  
9 8 of any assets set apart to the surviving spouse. Such  
9 9 elective share constitutes a judgment lien in favor of such  
9 10 surviving spouse against the possessor of such assets.  
9 11 Sec. 23. Section 633.264, Code 2005, is amended to read as  
9 12 follows:  
9 13 633.264 DISPOSAL OF PROPERTY BY WILL.

9 14 Subject to the rights of the surviving spouse to ~~elect to~~  
9 15 take ~~against the will~~ an elective share as provided by section  
9 16 633.236, any person of full age and sound mind may dispose by  
9 17 will of all the person's property, except sufficient to pay  
9 18 the debts and charges against the person's estate.  
9 19 Sec. 24. Section 633.271, Code 2005, is amended to read as  
9 20 follows:  
9 21 633.271 EFFECT OF DIVORCE OR DISSOLUTION.  
9 22 1. If after making a will the testator is divorced or the  
9 23 marriage is dissolved, all provisions in the will in favor of  
9 24 the testator's spouse or of a relative of the testator's  
9 25 spouse, including but not limited to dispositions,  
9 26 appointments relating to property, and nominations to serve in  
9 27 any fiduciary or representative capacity, are thereby revoked  
9 28 unless the will provides otherwise.  
9 29 2. ~~In~~ Unless the will provides otherwise, in the event the  
9 30 testator and spouse remarry each other, the provisions of the  
9 31 will revoked by the divorce or dissolution of marriage shall  
9 32 be reinstated unless otherwise revoked by the testator. This  
9 33 subsection shall not apply to provisions of the will that are  
9 34 in favor of a person who died prior to remarriage.  
9 35 3. For the purposes of this section, "relative of the  
10 1 testator's spouse" means a person who is related to the  
10 2 divorced testator's former spouse by blood, adoption, or  
10 3 affinity, and who, subsequent to a divorce or annulment,  
10 4 ceased to be related to the testator by blood, adoption, or  
10 5 annulment.  
10 6 Sec. 25. Section 633.477, subsection 10, Code 2005, is  
10 7 amended to read as follows:  
10 8 10. A statement as to whether or not all statutory  
10 9 requirements pertaining to taxes have been complied with ~~and a~~  
10 10 ~~statement as to including~~ whether the federal estate tax due  
10 11 has been paid, and whether a lien continues to exist for any  
10 12 federal estate tax, and whether inheritance tax was paid or a  
10 13 return was filed in this state.  
10 14 Sec. 26. Section 633.574, Code 2005, is amended to read as  
10 15 follows:  
10 16 633.574 PROCEDURE IN LIEU OF CONSERVATORSHIP.  
10 17 If a conservator has not been appointed, money due a minor  
10 18 or other property to which a minor is entitled, not exceeding  
10 19 in the aggregate ~~ten~~ twenty-five thousand dollars in value,  
10 20 shall be paid or delivered to a custodian under any uniform  
10 21 transfers to minors Act. The written receipt of the custodian  
10 22 constitutes an acquittance of the person making the payment of  
10 23 money or delivery of property.  
10 24 Sec. 27. Section 633.681, Code 2005, is amended to read as  
10 25 follows:  
10 26 633.681 ASSETS OF MINOR WARD EXHAUSTED.  
10 27 When the assets of a minor ward's conservatorship are  
10 28 exhausted or consist of personal property only of an aggregate  
10 29 value not in excess of ~~ten~~ twenty-five thousand dollars, the  
10 30 court, upon application or upon its own motion, may terminate  
10 31 the conservatorship. The order for termination shall direct  
10 32 the conservator to deliver any property remaining after the  
10 33 payment of allowed claims and expenses of administration to a  
10 34 custodian under any uniform transfers to minors Act. Such  
10 35 delivery shall have the same force and effect as if delivery  
11 1 had been made to the ward after attaining majority.  
11 2 Sec. 28. Section 633.699, Code 2005, is amended by  
11 3 striking the section and inserting in lieu thereof the  
11 4 following:  
11 5 633.699 POWERS OF TRUSTEES.  
11 6 Unless it is otherwise provided by the will creating a  
11 7 testamentary trust, the instrument creating an express trust,  
11 8 or by an order or decree duly entered by a court of competent  
11 9 jurisdiction, a trustee shall have all the powers granted a  
11 10 trustee under sections 633.4401 and 633.4402. Documents  
11 11 incorporating by reference powers granted a trustee under the  
11 12 probate code or under this section shall be interpreted  
11 13 accordingly, even if the execution or adoption of the  
11 14 instrument creating the trust occurred prior to July 1, 2005.  
11 15 Sec. 29. NEW SECTION. 633.699B APPLICABILITY OF LAW.  
11 16 The terms of this division, similar to other terms of this  
11 17 probate code relating to trusts and trustees, shall apply only  
11 18 to trusts that remain under continuous court supervision  
11 19 pursuant to section 633.10 and to trusts that have not been  
11 20 released from such continuous supervision pursuant to section  
11 21 633.10. Regarding all such trusts, the terms of this chapter  
11 22 shall supersede any inconsistent terms in the trust code and  
11 23 such trusts shall be governed by terms of the trust code that  
11 24 are not inconsistent with this probate code.

11 25 Sec. 30. Section 633.705, Code 2005, is amended by adding  
11 26 the following new subsections:  
11 27 NEW SUBSECTION. 3. Receipt of the affidavit described in  
11 28 subsection 2 by the holder of the principal's property  
11 29 constitutes sufficient acquittance for the payment of money,  
11 30 delivery of property, or transfer of a registered ownership of  
11 31 property as directed by the attorney in fact or agent and  
11 32 discharges the holder from further liability with respect to  
11 33 the money or property. The holder of the principal's property  
11 34 may rely in good faith on the statements contained in the  
11 35 affidavit and has no duty to inquire into the truth of any  
12 1 statements in the affidavit.

12 2 NEW SUBSECTION. 4. If an attorney in fact or agent has  
12 3 provided the affidavit described in subsection 2 and the  
12 4 holder of the principal's property refuses to pay, deliver, or  
12 5 transfer property or evidence thereof within a reasonable  
12 6 amount of time, the principal, acting through the attorney in  
12 7 fact or agent, may recover the property or compel its payment,  
12 8 delivery, or transfer in an action brought for that purpose  
12 9 against the holder of the property.

12 10 a. If an action is brought against the holder under this  
12 11 subsection and the court finds that the holder of the  
12 12 principal's property acted unreasonably in refusing to pay,  
12 13 deliver, or transfer the property as directed by the attorney  
12 14 in fact, the court may award any or all of the following:

12 15 (1) Damages sustained by the principal.

12 16 (2) Costs of the action.

12 17 (3) A penalty in an amount determined by the court, not  
12 18 less than five hundred dollars or more than one thousand  
12 19 dollars.

12 20 (4) Reasonable attorney fees, as determined by the court,  
12 21 based on the value of the time reasonably expended by the  
12 22 attorney and not by the amount of the recovery on behalf of  
12 23 the principal.

12 24 b. An action shall not be commenced more than one year  
12 25 after the date of the occurrence of the violation.

12 26 Sec. 31. Section 633.706, Code 2005, is amended by adding  
12 27 the following new subsections:

12 28 NEW SUBSECTION. 4. Receipt, by the holder of the  
12 29 principal's property, of the affidavit described in subsection  
12 30 2 constitutes sufficient acquittance for the payment of money,  
12 31 delivery of property, or transfer of the registered ownership  
12 32 of property as directed by the attorney in fact and discharges  
12 33 the holder from any further liability to any person with  
12 34 respect to the money or the property. The holder of the  
12 35 principal's property may rely in good faith on the statements  
13 1 in the affidavit and has no duty to inquire into the truth of  
13 2 any of the statements in the affidavit.

13 3 NEW SUBSECTION. 5. If an attorney in fact has provided  
13 4 the affidavit described in subsection 2 and the holder of the  
13 5 principal's property refuses to pay, deliver, or transfer any  
13 6 property or evidence thereof within a reasonable amount of  
13 7 time, the principal, acting through the attorney in fact may  
13 8 recover the property or compel its payment, delivery, or  
13 9 transfer in an action brought for that purpose against the  
13 10 holder of the property.

13 11 a. If an action is brought against the holder under this  
13 12 subsection and the court finds that the holder of the  
13 13 principal's property acted unreasonably in refusing to pay,  
13 14 deliver, or transfer the property as directed by the attorney  
13 15 in fact, the court may award any or all of the following:

13 16 (1) Damages sustained by the principal.

13 17 (2) Costs of the action.

13 18 (3) A penalty in an amount determined by the court, not  
13 19 less than five hundred dollars or more than one thousand  
13 20 dollars.

13 21 (4) Reasonable attorney fees, as determined by the court,  
13 22 based on the value of the time reasonably expended by the  
13 23 attorney and not by the amount of the recovery on behalf of  
13 24 the principal.

13 25 b. An action shall not be commenced more than one year  
13 26 after the date of the occurrence of the violation.

13 27 Sec. 32. Section 633.1102, Code 2005, is amended by adding  
13 28 the following new subsection:

13 29 NEW SUBSECTION. 0A. "Adjusted gross estate", as it  
13 30 relates to a trust, means the same as defined in section  
13 31 633.266.

13 32 Sec. 33. Section 633.1107, Code 2005, is amended to read  
13 33 as follows:

13 34 633.1107 SCOPE OF TRUST CODE.

13 35 1. This Except as otherwise provided in subsection 2, this

14 1 trust code ~~is intended to~~ shall apply to trusts, as defined in  
14 2 section 633.1102, ~~subsection 17,~~ that are intentionally  
14 3 created, or deemed to be intentionally created, by individuals  
14 4 and other entities.

14 5 2. With regard to trusts described in section 633.10, that  
14 6 have not been judicially released from continuous court  
14 7 supervision, this trust code shall apply only to the extent  
14 8 not inconsistent with the relevant provisions of chapter 633.  
14 9 With regard to all other trusts defined in section 633.1102,  
14 10 the terms of chapter 633 shall be inapplicable, and the terms  
14 11 of this trust code shall prevail over any inconsistent  
14 12 provisions of Iowa law.

14 13 Sec. 34. Section 633.2208, Code 2005, is amended by adding  
14 14 the following new subsection:

14 15 NEW SUBSECTION. 3. A trust may be divided pursuant to  
14 16 this section to allow a trust to qualify as a marital  
14 17 deduction trust for tax purposes, as a qualified subchapter S  
14 18 trust for federal income tax purposes, as a separate trust for  
14 19 federal generation skipping tax purposes, or for any other  
14 20 federal or state income, estate, excise, or inheritance tax  
14 21 benefit, or to facilitate the administration of a trust.

14 22 Sec. 35. Section 633.2301, subsection 4, unnumbered  
14 23 paragraph 1, Code 2005, is amended to read as follows:

14 24 A creditor or assignee of a beneficiary of a spendthrift  
14 25 trust ~~shall may~~ not compel a distribution that is subject to  
14 26 the trustee's discretion ~~if any of the following apply despite~~  
14 27 ~~the fact that:~~

14 28 Sec. 36. Section 633.2303, Code 2005, is amended by adding  
14 29 the following new subsection:

14 30 NEW SUBSECTION. 3. The assets of an irrevocable trust  
14 31 shall not become subject to the claims of creditors of the  
14 32 settlor of the trust due to a provision in the trust that  
14 33 allows a trustee of the trust to reimburse the settlor for  
14 34 income taxes payable by the settlor on the income of the  
14 35 trust. This subsection shall not limit the rights of a  
15 1 creditor of the settlor to assert a claim against the assets  
15 2 of the trust due to the retention or grant of any rights to  
15 3 the settlor under the trust instrument or any other beneficial  
15 4 interest of the settlor other than as specifically set forth  
15 5 in this subsection.

15 6 Sec. 37. Section 633.3107, Code 2005, is amended to read  
15 7 as follows:

15 8 633.3107 EFFECT OF DIVORCE OR DISSOLUTION.

15 9 1. If, after executing a revocable trust, the settlor is  
15 10 divorced or the settlor's marriage is dissolved, all  
15 11 provisions in the trust in favor of the settlor's spouse or of  
15 12 a relative of the settlor's spouse, including, but not limited  
15 13 to, dispositions, appointments of property, and nominations to  
15 14 serve in any fiduciary or representative capacity are revoked  
15 15 by divorce or dissolution of marriage unless the trust  
15 16 instrument provides otherwise.

15 17 2. ~~In~~ Unless the trust instrument provides otherwise, in  
15 18 the event the settlor and spouse remarry each other, the  
15 19 provisions of the revocable trust revoked by the divorce or  
15 20 dissolution of marriage shall be reinstated unless otherwise  
15 21 modified by the settlor, except for provisions in favor of a  
15 22 person who died prior to the remarriage which shall not be  
15 23 reinstated.

15 24 For the purposes of this section, "relative of the  
15 25 settlor's spouse" means a person who is related to the  
15 26 divorced settlor's former spouse by blood, adoption, or  
15 27 affinity, or who subsequent to the divorce or annulment ceased  
15 28 to be related to the settlor by blood, adoption, or affinity.

15 29 Sec. 38. NEW SECTION. 633.3112 CLASSIFICATION OF DEBTS  
15 30 AND CHARGES.

15 31 If a revocable trust becomes subject to the claims of a  
15 32 settlor's creditors and the costs of administration of the  
15 33 settlor's estate pursuant to section 633.3104, upon payment of  
15 34 the proper costs of administration of the trust and any claims  
15 35 against the trust, the debts and charges of the settlor's  
16 1 estate payable by the trust shall be classified pursuant to  
16 2 sections 633.425 and 633.426 if in existence on the date of  
16 3 the settlor's death.

16 4 Sec. 39. Section 633.4701, Code 2005, is amended by adding  
16 5 the following new subsection:

16 6 NEW SUBSECTION. 8A. For the purposes of this section, a  
16 7 term of the trust requiring that a beneficiary survive a  
16 8 person whose death does not make the beneficiary entitled to  
16 9 possession or enjoyment of the beneficiary's interest in the  
16 10 trust shall not be considered as "otherwise specifically  
16 11 stated by the terms of the trust" nor as an "express condition

16 12 of survivorship imposed by the terms of the trust".  
16 13 Sec. 40. Section 633.4701, subsection 9, Code 2005, is  
16 14 amended to read as follows:  
16 15 9. If an interest to which this section applies is given  
16 16 to a class, other than a class described as "issue",  
16 17 "descendants", "heirs of the body", "heirs", "next of kin",  
16 18 "relatives", ~~or~~ "family", or a class described by language of  
16 19 similar import, the members of the class who are living on the  
16 20 date on which the class becomes entitled to possession or  
16 21 enjoyment of the interest shall be considered as alternate  
16 22 beneficiaries under this section. However, neither the  
16 23 residuary beneficiaries under the settlor's will nor the  
16 24 settlor's heirs shall be considered as alternate beneficiaries  
16 25 for the purposes of this section.  
16 26 Sec. 41. NEW SECTION. 633.4703 GENERAL ORDER FOR  
16 27 ABATEMENT.  
16 28 Except as otherwise provided by the governing instrument,  
16 29 where necessary to abate shares of the beneficiaries of a  
16 30 trust for the payment of debts and charges, federal and state  
16 31 estate taxes, bequests, and the shares of children born or  
16 32 adopted after the execution of the trust, abatement shall  
16 33 occur in the following order:  
16 34 1. Shares allocated to the residuary beneficiaries of the  
16 35 trust shall be abated first, on a pro rata basis.  
17 1 2. Shares defined by a dollar amount, on a pro rata basis.  
17 2 3. Shares described as specific items of property whether  
17 3 tangible or intangible shall be abated last, and such  
17 4 abatement shall be done as equitably by the trustee among the  
17 5 various beneficiaries as circumstances reasonably allow.  
17 6 4. Notwithstanding subsections 1, 2, or 3, a disposition  
17 7 in favor of the grantor's surviving spouse shall not be abated  
17 8 where such abatement would have the effect of increasing the  
17 9 amount of federal estate or federal gift taxes payable by a  
17 10 person or an entity.  
17 11 Sec. 42. NEW SECTION. 633.4704 SIMULTANEOUS DEATH.  
17 12 If the determination of the successor of a beneficial  
17 13 interest in a trust is dependent upon whether a beneficiary  
17 14 has survived the death of a settlor, of another beneficiary,  
17 15 or of any other person, the uniform simultaneous death Act,  
17 16 sections 633.523 through 633.528, shall govern the  
17 17 determination of who shall be considered to have died first.  
17 18 Sec. 43. NEW SECTION. 633.4705 PRINCIPAL AND INCOME.  
17 19 Chapter 637 shall apply to trusts subject to this chapter.  
17 20 Sec. 44. NEW SECTION. 633.4706 SMALL DISTRIBUTIONS TO  
17 21 MINORS == PAYMENT.  
17 22 When a minor becomes entitled under the terms of the trust  
17 23 to a beneficial interest in the trust upon the distribution of  
17 24 the trust fund and the value of the interest does not exceed  
17 25 the sum of twenty-five thousand dollars, the trustee may pay  
17 26 the interest to a custodian under any uniform transfers to  
17 27 minors Act. Receipt by the custodian shall have the same  
17 28 force and effect as though payment had been made to a duly  
17 29 appointed and qualified conservator for the minor.  
17 30 Sec. 45. NEW SECTION. 633.5105 CHARITABLE TRUSTS.  
17 31 A charitable trust that is a private foundation shall be  
17 32 governed by the provisions of chapter 634.  
17 33 Sec. 46. Section 633.6101, Code 2005, is amended to read  
17 34 as follows:  
17 35 633.6101 SUBJECT MATTER JURISDICTION.  
18 1 The district court sitting in probate has exclusive  
18 2 jurisdiction of proceedings concerning the internal affairs of  
18 3 a trust and of actions and proceedings to determine the  
18 4 existence of a trust, actions and proceedings by or against  
18 5 creditors or debtors of a trust, and other actions and  
18 6 proceedings involving a trust and third persons. Such  
18 7 jurisdiction may be invoked by any interested party at any  
18 8 time.  
18 9 Sec. 47. Sections 633.28, 633.699A, 633.703A, 633.703B,  
18 10 633.7101, 636.60, 636.60A, 636.61, Code 2005, are repealed.  
18 11 Sec. 48. Sections 633.2; 633.3, unnumbered paragraph 1;  
18 12 633.3, subsections 7 and 20; 633.22, subsection 4; 633.34;  
18 13 633.38; 633.40, subsection 1; 633.44; 633.46; 633.47; 633.71;  
18 14 633.88; 633.118; 633.160; 633.162; 633.350; 633.365; 633.389;  
18 15 633.433; 633.434; 633.500; 633.502; 633.597; 633.633;  
18 16 633.633A; and 633.652, Code 2005, are amended by striking from  
18 17 the applicable section, paragraph, or subsection the word  
18 18 "Code" and inserting in lieu thereof the following: "probate  
18 19 code".  
18 20 Sec. 49. CODE EDITOR DIRECTIVE. Sections 633.707,  
18 21 unnumbered paragraph 1; 633.711, subsection 2; 633.800;  
18 22 633.801, unnumbered paragraph 1; 633.803; 633.807, subsections

18 23 2 and 7; 633.808; 633.809; 633.810; 633.901; 633.902,  
18 24 unnumbered paragraph 1; 633.903; 633.904; 633.905, subsection  
18 25 6; 633.913, subsections 5 and 6; 633.914; 633.915; 633.916;  
18 26 633.917; 633.1101; 633.1102, unnumbered paragraph 1; and  
18 27 633.1104; Code 2005, are amended by striking from the  
18 28 applicable section, paragraph, or subsection the word  
18 29 "division" and inserting in lieu thereof the following:  
18 30 "chapter".

18 31 Sec. 50. CODE EDITOR DIRECTIVE. The Code editor is  
18 32 directed to transfer from chapter 633, division XVII (sections  
18 33 633.705 and 633.706), division XVIII (633.707 through  
18 34 633.711), division XIX (633.800 through 633.811), and division  
18 35 XX (633.901 through 633.917), as amended in this Act, to new  
19 1 chapters 633B, 633C, 633D, and 633E, respectively.

19 2 Sec. 51. CODE EDITOR DIRECTIVE. The Code editor is  
19 3 directed to transfer from chapter 633, sections 633.1101  
19 4 through 633.1108, 633.2101 through 633.2107, 633.2201 through  
19 5 633.2208, 633.2301 through 633.2303, 633.3101 through  
19 6 633.3111, 633.4101 through 633.4111, 633.4201 through  
19 7 633.4214, 633.4301 through 633.4309, 633.4401 and 633.4402,  
19 8 633.4501 through 633.4507, 633.4601 through 633.4605, 633.4701  
19 9 and 633.4702, 633.5101 through 633.5104, 633.6101 through  
19 10 633.6105, 633.6201 and 633.6202, and 633.6301 through  
19 11 633.6308, as amended in this Act, to new chapter 633A and to  
19 12 retain the same section number designations.

19 13 Sec. 52. CODE EDITOR DIRECTIVE. The Code editor is  
19 14 directed to correct internal references in the Code as  
19 15 necessary due to the enactment of this Act.

19 16 EXPLANATION

19 17 This bill amends various provisions in the probate code,  
19 18 and transfers certain divisions currently located in the  
19 19 probate code (Code chapter 633) relating to trusts (division  
19 20 XXI, also known as the Iowa trust code), powers of attorney  
19 21 (division XVII), medical assistance trusts (division XVIII),  
19 22 transfers on death security registration (division XIX), and  
19 23 uniform disclaimer of property interest Act (division XX) from  
19 24 the probate code to Code chapters 633A, 633B, 633C, 633D, and  
19 25 633E, respectively. The bill also consolidates certain  
19 26 provisions relating to trusts into the trust code.

19 27 The bill amends the definition of a trust subject to the  
19 28 ongoing administration and supervision of the probate code to  
19 29 specifically include a trust in existence on July 1, 2005, and  
19 30 that is subject to continuous court supervision and a trust  
19 31 established by court decree that is subject to continuous  
19 32 court supervision. Such a trust shall be governed by both the  
19 33 probate code and the trust code, as amended, where the  
19 34 provisions of the trust code do not conflict with the  
19 35 provisions of the probate code. Upon joint application by the  
20 1 trustee administering a trust that is in existence on July 1,  
20 2 2005, and subject to continuous court supervision, and  
20 3 following notice to the appropriate beneficiaries, the court  
20 4 shall release the trust from further jurisdiction of the  
20 5 probate court unless a beneficiary objects. Conforming  
20 6 amendments in both the probate code and the trust code  
20 7 emphasize that all court proceedings regarding trusts shall be  
20 8 governed by the district court sitting in probate.

20 9 The bill makes conforming Code changes, including repeals,  
20 10 to sections of the probate code related to the amended  
20 11 definition of a trust and the administration of the probate  
20 12 docket.

20 13 The bill amends sections in the probate code relating to  
20 14 small distributions of money to minors under the terms of a  
20 15 will to a bequest or legacy or to a share of the estate of an  
20 16 intestate, by increasing the size of the interest from \$10,000  
20 17 to \$25,000. The bill creates a similar provision in the trust  
20 18 code, as amended, relating to small distributions of money to  
20 19 minors in regard to a beneficial interest in a trust fund.

20 20 The bill amends and repeals sections in the probate code  
20 21 that were enacted prior to the creation of the trust code  
20 22 relating to general default powers of a trustee, modification  
20 23 or termination of uneconomical testamentary trusts, and the  
20 24 creation and establishment of separate trusts.

20 25 The bill amends sections of the probate code relating to  
20 26 the right of a surviving spouse to take an elective share of  
20 27 the deceased spouse's estate including the right to receive a  
20 28 share of the deceased spouse's revocable trust assets and the  
20 29 right to elect a life estate in the homestead. Current law  
20 30 provides that a surviving spouse may elect against the will of  
20 31 a deceased spouse and claim a statutory share that does not  
20 32 include property held in trust by the deceased spouse or the  
20 33 right to elect a life estate in the homestead.

20 34 The bill amends sections of the probate code relating to  
20 35 the revocation of spousal benefits in a testator's will upon  
21 1 divorce or dissolution of the testator's marriage to include  
21 2 relatives of the spouse who, after the divorce, are not  
21 3 relatives of the testator, and duplicates the same amendments  
21 4 relating to a settlor's revocable trust upon divorce or  
21 5 dissolution of the settlor's marriage in the trust code, as  
21 6 amended.

21 7 The bill amends a section of the probate code relating to  
21 8 the determination of which estates must file inheritance tax  
21 9 returns with the Iowa department of revenue.

21 10 The bill removes divisions in the probate code related to  
21 11 powers of attorney (division XVII), medical assistance trusts  
21 12 (division XVIII), transfers on death security registration  
21 13 (division XIX), and uniform disclaimer of property interest  
21 14 (division XX), from the probate code and creates separate Code  
21 15 chapters 633B, 633C, 633D, and 633E, respectively. The bill  
21 16 amends power of attorney provisions relating to the validity  
21 17 of power of attorney instruments and financial institutions.

21 18 The bill removes the trust code (division XXI) from the  
21 19 probate code, amends certain sections, and creates a separate  
21 20 Code chapter (633A) for the trust code.

21 21 The bill amends sections of the trust code relating to the  
21 22 scope of the trust code and trusts governed by the probate  
21 23 code, parallel to the amended provisions regarding the  
21 24 distinction between trusts subject to continuous court  
21 25 supervision and trusts not subject to continuous court  
21 26 supervision in the probate code. The bill also amends  
21 27 sections of the trust code relating to the division of a trust  
21 28 for tax purposes, the rights of creditors or transferees to  
21 29 obtain trust assets, the effect of a divorce or dissolution on  
21 30 a settlor's revocable trust, and trust construction provisions  
21 31 relating to rights of survivorship and future interests.

21 32 The bill creates new sections in the trust code applying  
21 33 the uniform simultaneous death Act and the uniform principal  
21 34 and income Act to trusts subject to the trust code.

21 35 The bill repeals certain sections in Code chapter 636  
22 1 relating to powers and duties of trustees of trusts not  
22 2 subject to court administration, the validity of voluntary  
22 3 trusts, and the definition of an adjusted gross estate in an  
22 4 express trust not subject to probate court administration.

22 5 The bill directs the Code editor to transfer and recodify  
22 6 the appropriate divisions and to make conforming internal  
22 7 reference changes, as necessary.

22 8 LSB 1076SC 81  
22 9 rh:rj/sh/8